

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

SMARTFLASH LLC and
SMARTFLASH TECHNOLOGIES
LIMITED,

Plaintiffs,

V.

APPLE INC., ROBOT ENTERTAINMENT,
INC., KINGSISLE ENTERTAINMENT, INC.,
and GAME CIRCUS LLC,

Defendants.

Civil Action No. 6:13-cv-447

**DECLARATION OF MARK BUCKLEY IN SUPPORT OF DEFENDANT APPLE'S
MOTIONS TO SEVER AND TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)**

I, Mark Buckley, declare as follows:

1. Unless stated otherwise, I have personal knowledge of the facts set forth below, and if called as a witness, could and would competently testify thereto.

2. I am employed as a Finance Manager at Apple Inc. ("Apple"). I work in Apple's office in Sunnyvale, California. I have been employed by Apple since October 2002. I provide this declaration in support of Apple's motions to sever and transfer the dispute between Apple and Smartflash LLC and Smartflash Technologies Ltd. from the Eastern District of Texas to the Northern District of California. Unless otherwise indicated below, the statements in this declaration are based upon my personal knowledge or corporate records maintained by Apple in the ordinary course of business.

3. Apple is a California corporation headquartered in Cupertino, California, which is in the Northern District of California. Apple has maintained its headquarters in Cupertino since it was founded in 1976. Apple's management and primary research and development facilities are located in Cupertino, California. Apple has approximately 15,900 employees who work in or near its headquarters in Cupertino, California.

4. Apple designs, manufactures, and markets personal computers, portable digital music players, and mobile communication devices and sells a variety of related software, services, peripherals, and networking solutions.

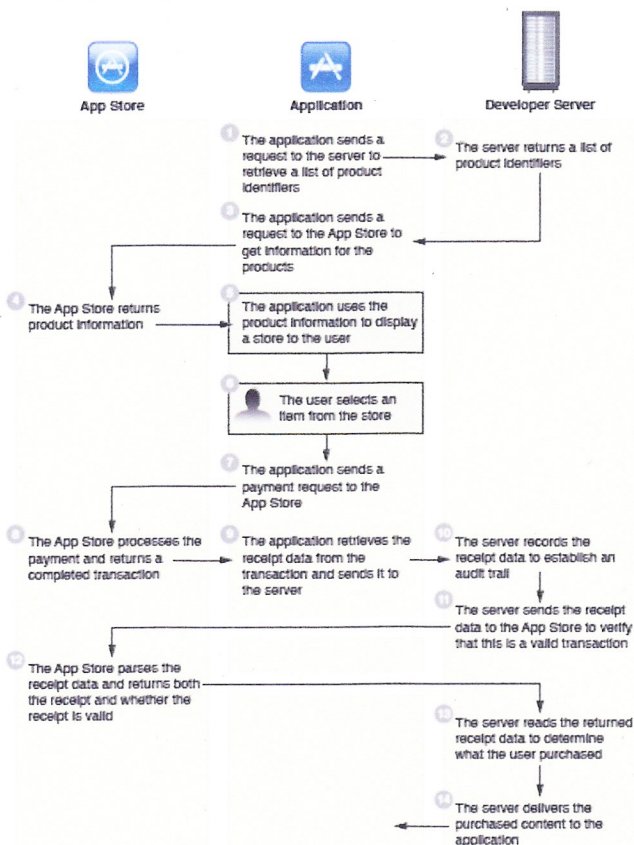
5. I understand that in its Complaint filed against Apple, Plaintiffs identify the following accused Apple products: (i) any version of iTunes that can access iTunes Store; (ii) any version of the App Store app; (iii) any version of any Apple hardware or software product (e.g., Apple's various iPhone products, Apple's various iPad products, Apple's various Apple TV products, Apple's various Mac computer products, Apple's various operating system

software, etc.) that includes any version of iTunes or the App Store app that can access iTunes Store; (iv) any version of Mac App Store; (v) any Apple hardware or software product that includes any version of Mac App Store; and (vi) Apple's internal servers involved in operating Apple's iTunes Store, Apple's Mac App Store as well as Apple's servers involved in Apple's in-application payment functionality as well as Apple's servers involved in Apple's iAd Network (collectively, "Accused Products").

6. I understand that Plaintiffs have accused the three Defendant app developers—Robot Entertainment, Inc. ("Robot"), KingsIsle Entertainment, Inc. ("KingsIsle"), and Game Circus LLC ("Game Circus")—of infringement based on different apps.

7. The Store Kit is used by over 37,000 app developers nationwide and worldwide.

8. I understand that with respect to the Store Kit, there are several product delivery models. One of them functions according to the graphic below, except that there is an Apple Server that performs the role of the Developer Server depicted on the right side of the picture.



9. I am not aware of any in-app purchases for WizardBlox.

10. The Accused Products were primarily developed by engineers at Apple's Cupertino campus. The majority of Apple employees with knowledge of the design, development, operation, and marketing of the Accused Products reside and work near Cupertino, California.

11. Electronic and paper records of their work, along with Apple business records related to product revenue, are located in or near Cupertino. This includes documents relating to sales, licensing, marketing, customer support, and engineering, including source code, for the Accused Products. Licensing documents are also located in Sunnyvale.

12. Apple sells iPhones, iPads, and Apple TV throughout the United States. Further, iTunes and App Store are also available throughout the United States.

13. As of the end of September 2013, Apple operated approximately 254 retail stores in the United States. Apple has two retail stores in the Eastern District of Texas, in Plano and Frisco. I am not aware of any employee in any of these retail stores that could be characterized as a relevant witness in this litigation regarding the Accused Products. For example, I am not aware of any Apple employee with relevant knowledge of the design, development, operation, or marketing of the Accused Products who resides or works in the Eastern District of Texas.

14. Aside from its retail stores, Apple does not otherwise maintain any facilities or documents in the Eastern District of Texas.

15. In addition to me, other key people with factual knowledge of the sales, design, and operations of the Accused Products are based in or around Cupertino, California.

16. Kenley Sun is knowledgeable about iAd, and is located in Cupertino. Mr. Sun's manager is located in Cupertino, California. Four people report to Mr. Sun, all of whom are also located in Cupertino.

17. Alan Ward is knowledgeable about in-app payments and is located in Cupertino. Mr. Ward's manager is also based in Cupertino, California. Two people report to Mr. Ward, both of whom are also located in Cupertino.

18. I am knowledgeable about sales and finances related to the Accused Products.

19. Chris Bell is knowledgeable about marketing related to the iTunes Store. Mr. Bell is located in Cupertino.

20. Payam Mirrashidi is knowledgeable about technical issues relating to the iTunes Store. Michael Chu is also knowledgeable about the iTunes Store and App Store. They are all located in Cupertino.

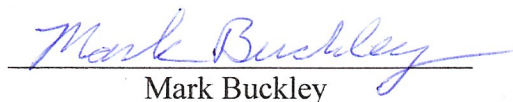
21. In addition, I understand that Augustin Farrugia was identified in the Complaint filed against Apple. Mr. Farrugia is located in Cupertino.

22. Apple servers involved in transmitting financial information and authorizing orders for apps are located in Newark, CA and Maiden, NC. I have been told that servers that host iTunes and App store content are located throughout the country. Locations of those servers in and around San Francisco and the Silicon Valley include Berkeley, Campbell, Cupertino, Fremont, Oakland, Palo Alto, Pinole, Pleasanton, Redwood City, San Bruno, San Francisco, San Jose, San Lorenzo, San Rafael, Santa Clara, Santa Rosa, and Sunnyvale. There are far fewer locations near Eastern Texas, such as Plano and Allen.

23. Apple maintains financial records regarding all of the Accused Products, as well as information about the sale and download of the accused app developer apps, and information about in-app payments and iAd revenue. These records are maintained in Cupertino, California.

24. The individual agreements Apple has with Game Circus, KingsIsle, and Robot state that the laws of the State of California govern the agreements and that any dispute arising out of the agreements will take place in the Northern District of California.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on the 17 day of October 2013 at Sunnyvale, California.


Mark Buckley